



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857
SGM 94-4

MAY 23 1994

TO: All Indian Health Service Employees

FROM: Director


SUBJECT: -Department's Policy on Processing Complaints Based
on Sexual Orientation

By memorandum dated December 6, 1993, the Secretary advised OPDIV and STAFFDIV heads of their accountability for ensuring the Department's Equal Employment Opportunity (EEO) Policy is fully understood and complied with throughout their organizations. For this purpose, I am transmitting the attached guidance for implementation. It allows individuals alleging-discrimination based on sexual orientation to elect to have such allegations addressed either under the procedures described in the attachment or under any other procedure that covers them, such as a negotiated grievance procedure or by the Office of Special Counsel. A flow chart summarizing the Department's new policy is also attached for your information.

Allegations of discrimination or harassment because of sexual orientation may follow a procedure that mirrors the existing precomplaint counseling and investigation processes. The attached instruction for processing sexual orientation complaints only applies to HHS employees. There is no entitlement to further administrative review of the complaint. The complaint cannot be the subject of either a hearing before an Administrative Judge of the Equal Employment Opportunity Commission or an appeal to EEOC. Contact your servicing EEO office for further information.

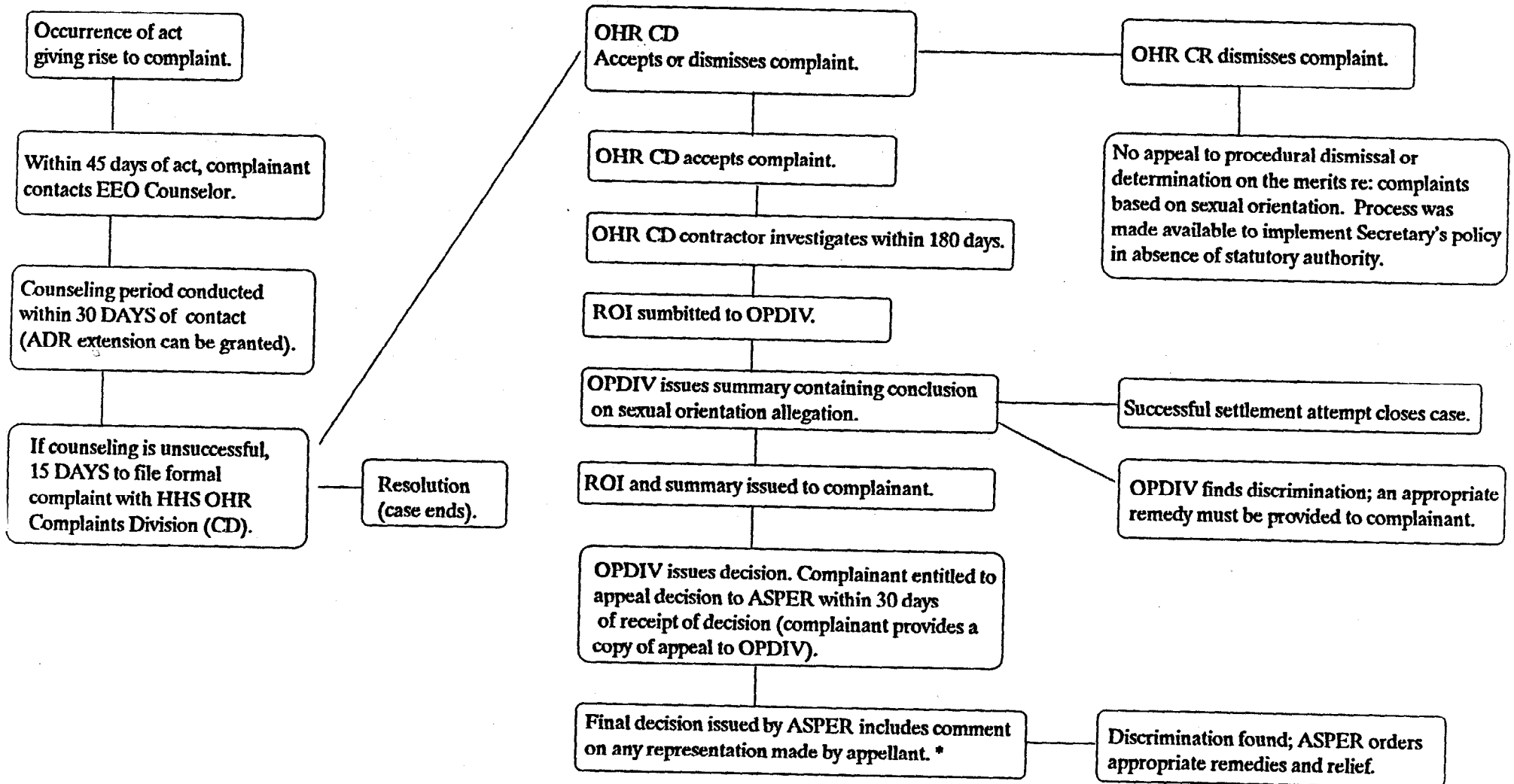
I am directing all responsible officials to ensure that this information is communicated to their respective staffs.

Existing procedures regarding the processing of complaints of discrimination because of race, color, religion, gender, national origin, age, and disability remain in full force and effect. Your assistance in supporting all equal employment policies is appreciated.


Michael H. Trujillo, M.D., M.P.H.

Attachments

**FLOW CHART OF DHHS PROCESS FOR SINGLE
BASIS SEXUAL ORIENTATION COMPLAINTS**



* NOTE: NO ENTITLEMENT TO FURTHER ADMINISTRATIVE REVIEW OF THE COMPLAINT. COMPLAINT CANNOT BE SUBJECT OF EITHER A HEARING BEFORE AN ADMINISTRATIVE JUDGE OF THE EEOC OR AN APPEAL TO EEOC.

PROCEDURES FOR PROCESSING ALLEGATIONS
OF DISCRIMINATION OR HARASSMENT
BECAUSE OF SEXUAL ORIENTATION

1. Precomplaint & Counseling

All Departmental employees, including those who are not members of a bargaining unit covered by an agreement which prohibits discrimination because of sexual orientation, and applicants for employment, should be informed of their entitlement to present to an EEO counselor individual concerns that they may have been subjected to discrimination or harassment because of their sexual orientation. Employees should be informed that their entitlement in this regard derives from Departmental policy and not from Equal Employment Opportunity Commission (EEOC) regulations which govern the processing of discrimination complaints in the Federal sector. In this regard, Counselors are responsible for advising employees of relevant distinctions between complaints based on sexual orientation and those processed under EEOC regulations.. For example, complaints based on sexual orientation cannot be the subject of either a hearing before an Administrative Judge of the EEOC or an appeal to EEOC. When contacted by such employees, EEO Counselors are responsible for providing them with appropriate counseling, utilizing traditional methods, including use of alternative dispute resolution techniques. Counselors are also responsible for advising employees of, among other things, their right to anonymity .(unless waived) during counseling, and their right to representation throughout the complaint process, including the counseling stage. In the event counseling is unsuccessful, complainants should be informed in writing of an entitlement to file a formal complaint with the Director, office of Human Relations (OHR), in the same form and within the same time limits as those filed on any of the bases covered by. EEOC complaint processing regulations.

2 . Formal Complaints of Discrimination

- k Intake and Investigation. Formal complaints of discrimination or harassment because of sexual orientation should be filed with the Director, OHR The complaint will be reviewed to assure that it meets jurisdictional prerequisites; e.g., timeliness. The Complainant will be promptly notified of the acceptance or rejection of the formal complaint. Accepted complaints will be investigated the same as any other allegation of discrimination accepted by the Department. In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and, in addition to any of the bases covered by EEOC regulations, all allegations will be investigated concurrently. However, following investigation, those allegations not based on sexual orientation will be processed according to existing procedures governing complaints filed under EEOC regulations, Reports of investigation will be provided to the appropriate Departmental EEO Official for appropriate action.

- B. OPDN and Regional Director (RD) Review and Decision. Upon receipt of a Report of Investigation (ROI) of an allegation of discrimination or harassment based on sexual orientation, the OPDIV or RD is responsible for preparing a summary of the record of the case. The summary should succinctly state the issues and delineate the evidence addressing both sides of each issue in the case. The summary should state those facts, supported by the record, which will sustain a conclusion. Upon completion of the summary, a copy of the entire record will be provided to the Complainant. The OPDN or RD is also responsible for making every reasonable effort to resolve the complaint. If attempts to resolve the complaint are unsuccessful, the OPDN or RD is responsible for issuance of a decision which addresses the merits of each allegation of discrimination or harassment based on sexual orientation, and for providing the Complainant with appropriate information regarding his or her entitlement to appeal the decision to the Department's Director of EEO, within 30 days of receipt of the decision. The decision should inform the Complainant that a copy of any appeal must be provided to the OPDW or RD. A copy of the decision must be provided to the Department's Director of EEO. Where the OPDN or RD determines that a Complainant has been denied equal opportunity because 'of sexual orientation, an appropriate remedy must be provided the complainant.
- C. Appellate Decision by Director of EEO. Upon receipt of an appeal from an . OPDN or RD decision, the Director of EEO will ensure that the full record of the case is obtained from the OPDW or RD and that the OPDIV or RD is provided with an opportunity to comment on any representations made by the appellant. Following a review of the record, the Director of EEO will issue a decision which will consist of findings on the merits of each issue in the complaint and, when discrimination is found, order appropriate remedies and relief. The appellate decision of the Director of EEO is final and there is no entitlement to further administrative review of the complaint.

3. Remedies and Relief

When it is determined that an individual has been denied equal employment opportunity because of sexual orientation, an appropriate "make whole" remedy must be fashioned. Even though complaints based on sexual orientation are not within the jurisdiction of the EEOC, the guidance provided in 29 C.F.R, Sections 1614.501(b) and (c) may be utilized to develop relief for either an applicant or an employee.

4. Representation and Official Time

- A. At any stage in the processing of a complaint of discrimination or harassment because of sexual orientation, including the counseling stage, the complainant is entitled to be accompanied, represented, and advised by a representative of complainant's choice.
- B. If the complainant is an employee of the Department, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency requests for information. If the complainant is an employee of the Department and designates another employee of the Department as representative, the representative shall similarly have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency requests for information.
- C. The agency is not obligated to change work schedules, incur overtime costs, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

SGM 94-4C

OEC 6 1993

MEMORANDUM TO OPDIV AND STAFFDIV HEADS

Subject: Equal Employment Opportunity Policy

I am issuing to all employees the attached message, which states this Department's policy for equal employment opportunity. Simply put, we will countenance no discrimination or harassment of any kind in the HHS workplace. No employee will be denied equal opportunity because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

You are accountable for ensuring that this policy is both fully understood and fully complied with throughout your organization. This includes providing training on diversity issues; taking measures where mistreatment of employees exists or persists, and clearly communicating the policy by incorporating it in your internal personnel processes. In the coming months, during the process of streamlining and revising HHS Personnel policies, the Assistant Secretary for Personnel Administration will ensure that our EEO policy is fully reflected in both dental and OPDIV processes. He will also follow up with your personnel and equal employment opportunity officers to offer guidance on local procedures that may need to be reviewed or revised.

Thank you.

A handwritten signature in black ink, appearing to read "Donna E. Shalala".

Donna E. Shalala

Attachment

cc: Regional Directors



DEC 6 1993

A Special Message For ALL HHS Employees

The Department of Health and Human Services has, at the very core of our mission, responsibility for promoting the well-being of all Americans. The respect and dignity with which we treat each other here in the Department is crucial to the successful completion of this mission.

To foster an atmosphere of continuous improvement in our products and services, we must create an environment that fully utilizes the talents and capabilities of each and every one of us, from all backgrounds and at all organizational levels. And to do this, we must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind - a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

My personal commitment to diversity and quality is longstanding and non-negotiable. Quite simply, diversity and inclusion are prerequisites to excellence. I am determined that this Department will always be viewed as a model workplace, where everyone has an equal opportunity to serve.

Let me be clear, both discrimination and harassment are violations of the law as well as the policies of this Department. If you feel you have been the victim of discrimination or harassment, contact your local equal employment opportunity office, local union representative, or servicing personnel office. In addition, your local employee assistance program can help resolve workplace differences and counsel employees who feel they are being treated unfairly.

However, our commitment must go far beyond compliance with anti-discrimination laws. I am asking for the support of all managers, not just in their hiring and promotion decisions, but also in welcoming responsibility for nurturing and capitalizing on the very best that every employee has to give. And I am asking employees to understand that a culturally diverse workplace is critical to our mission to serve all Americans.

Celebrating cultural diversity will help us better understand each other and our customers. And with better understanding comes a greater capacity to serve. That is our real goal, and it is one that I know we can achieve.

A handwritten signature in black ink, appearing to read "Donna E. Shalala".

Donna E. Shalala